Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1018

WILLIAM L. DELAY,

Petitioner,

VS.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

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No.

WILLIAM L. DELAY,

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vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

Petitioner, WILLIAM L. DELAY, prays that a Writ of Certiorari issue to review the Judgment of the Illinois Supreme Court entered on October 1, 1979, and the judgment of the Illinois Appellate Court entered on April 19, 1979 in the above entitled cause.

CITATION TO THE OPINION BELOW

The order of the Illinois Supreme Court denying the petitioner leave to appeal, printed in the Appendix attached hereto, *infra* page 10a, is unreported at present. The opinion of the Illinois Appellate Court herein is reported at 70 Ill. App. 3d 712, 27 Ill. Dec. 267, 388 N.E.2d 1316.

JURISDICTION

The opinion and judgment of the Illinois Appellate Court were filed and entered on April 19, 1979. There was no request for a rehearing. The petitioner filed a petition for leave to appeal in the Illinois Supreme Court. That petition was denied on October 1, 1979. This Petition for Writ of Certiorari will be timely filed on or before December 31, 1979.

The jurisdiction of this court is invoked under 28 U.S.C. § 1257(3).

QUESTION PRESENTED

Is the constitutional guarantee of due process of law violated by an anti-theft provision of the Illinois Vehicle Code whereby a person transgressing its terms can be imprisoned for up to three years with no proof of criminal intent on his part?

STATUTE AND CONSTITUTIONAL PROVISION INVOLVED

Ch. 95½, Sec. 4-105(e) (Ill. Rev. Stat. 1977, Volume 2, p. 1333) provides:

> It is a violation of this Chapter for any bank, currency exchange, finance company, new or used vehicle dealer, or any other person to: . . . (e) Use a false or fictitious name or address, or make a material false statement, or fail to disclose a security interest, or conceal any other material fact on any application for a certificate of title, junking certificate, salvage certificate, any application for vehicle registration, or any application for license plates or registration sticker;

The 14th Amendment to the Constitution of the United States provides in material part:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; . . ."

STATEMENT OF THE CASE

This is a case of first impression in Illinois. The petitioner is a used-car dealer with his place of business at 7246 South Stony Island, Chicago, Illinois. On November 23, 1977 he appeared at the desk of Gladys Hoagland at the Secretary of State's office in Springfield, Illinois. He wanted to apply for a certificate of title for a 1977 Pontiac automobile. Ms. Hoagland checked the records on the car, and determined that the last title was a salvage title issued to Motors Insurance Company. A salvage certificate is issued only when a car is lost, destroyed, or stolen. She then took the petitioner and introduced him to the supervisor of the title division, Shirley Caldwell. She introduced the petitioner as "Mr. D.". Ms. Caldwell had seen the petitioner a few times before when he had done business on her floor, but she had never talked to him before, (R. 38).[1]

Ms. Hoagland then handed Ms. Caldwell four documents relating to the automobile: a duplicate application for title; a microfilm copy of the salvage certificate; the petitioner's title only application; and the petitioner's salvage affidavit. Ms. Caldwell then threw away the application for duplicate title, as it was inappropriate because title to the car was in salvage.

Ms. Caldwell then filled out an application for a certificate of salvage on the Pontiac, and labeled it, "Duplicate" (R. C55), R. 46. She then cancelled the microfilm "Duplicate Salvage Certificate". She gave the salvage certificate she had just filled out to the petitioner and asked him to sign it. He signed it "J. Dags" and gave it back to her. Ms. Caldwell knew at the

[1] All transcript references are to the Report of Proceedings of July 18, 1978 in the trial court.

time that Mr. Delay was not J. Dags. She then wrote on the salvage certificate "cancelled for title only" (R. C55), R. 48. On the basis of the salvage affidavit (R. C56), she then issued new title to the Pontiac in the name of the petitioner's business, "Mr. D's Auto Sales", (R. C16), R. 48. During this transaction, Ms. Caldwell assumed that the petitioner was an agent of the title holder insurance company, although the defendant never held himself out to be such.

On February 7, 1978 the Petitioner was charged with the crimes of forgery (ch. 38, Sec. 17-3(a)(1), Ill. Rev. Stat. 1977) and use of a false name on a salvage certificate application (ch. 95½, Sec. 4-105(e)), both charges resulting from his signing "J. Dags" (R. C1 & 2). At trial, after the State's case, the Judge directed verdict in the Petitioner's favor on the forgery count, but refused to do so on the other count (R. 66, 67).

Testifying in his own defense, the Petitioner stated that he had bought the Pontiac in question from one John Bishop who had given him the salvage title to the Pontiac, and power of attorney regarding it. The Petitioner said that he had given this power of attorney, as well as a receipt of purchase, to Gladys Hoagland at the Secretary of State's office on November 23, 1977.

The Petitioner also said that he had been a used car dealer for more than three years, and that he had bought a number of cars from individuals who had been given salvage titles from insurance companies (R. 69, 94). During that time the Petitioner averaged 18 to 20 title transfers per month. As regards his signing the name "J. Dags," he testified that Shirley Caldwell told him to sign it that way (R. 94). He signed it in the manner set out on the microfilm copy of the salvage certificate (App. p. 5a).

HOW FEDERAL QUESTION IS PRESENTED

At the completion of the State's case the Petitioner's attorney argued for a directed verdict on the grounds that the charge was a felony, for which the Petitioner could be imprisoned, "and because of that, criminal intent must be necessary at the time the person uses the false name" (R. 62). The Petitioner's attorney argued at length that there was "no evidence at all of criminal intent in the State's case in chief" (R. 63 and R. 60-64). The court ruled against Petitioner's motion on the ground that the State did not have to show a criminal intent (R. 66).

Later at the conference on jury instructions defense counsel requested that the court instruct the jury that the State must prove that the Petitioner acted with criminal intent (R. 100, App. p. 5a). This request was refused (R. 101). The jury found the Petitioner guilty and he was sentenced to a 2 year term of imprisonment, App. p. 5a.

In his motion for a new trial Petitioner argued that he had been denied his right to due process of law in that "the Court erred in not allowing the Defendant to tender an instruction including the element of criminal intent, the Jury thus being compelled to reason that the crime could be committed in innocence." (R. C139). The Court denied this motion and the Petitioner appealed.

In the Illinois Appellate Court the Petitioner argued in his brief and at oral argument that the refusal of the trial court "to instruct the jury that it must find that the defendant acted with criminal intent in order to convict him . . . violated the defendant's right to due process of

law, as guaranteed him by the Illinois and United States Constitutions." (Petitioner's Appellate Court brief pp. 2, 13). Concomitantly, the Petitioner argued that to construe the statute in question to be an absolute liability statute would cause it to fail the test of constitutionality on grounds of due process (Petitioner's Appellate Court brief, pp. 2, 10-13). This position was also pressed at oral argument in the Appellate Court. In its decision the Illinois Appellate Court held that the statute in question was an absolute liability statute, and consequently, no proof of criminal intent was required (App. p. 6a). The Illinois Appellate Court did not discuss any of the constitutional issues in its opinion.

The Petitioner then filed his petition for leave to appeal in the Illinois Supreme Court. In that petition he reiterated the above-mentioned constitutional arguments that he had made in the Illinois Appellate Court, (Petitioner's petition for leave to appeal in the Illinois Supreme Court, esp. pp. 1-5, 18-20). The Petitioner again asserted that "the petitioner's conviction under ch. 95½, Sec. 4-105(e) (Ill. Rev. Stat.), in the absence of any showing of wrongful intent, violates the Petitioner's due process rights . . . guaranteed him by Article I, Sec. 2 of the Illinois Constitution and the Fourteenth Amendment to the United States Constitution." (Petition for Leave to Appeal, p. 3). The Illinois Supreme Court denied Petitioner's petition for leave to appeal, App. p. 10a.

REASONS FOR GRANTING THE WRIT

The Illinois Supreme Court and the Illinois Appellate Court have decided a federal question of substance which has not heretofore been specifically determined by this Court. Furthermore, they have decided it in a way that is probably not in accord with applicable decisions of this Court. The question is whether the constitutional guarantee of due process of law is violated by an anti-theft provision of the Illinois Vehicle Code whereby a person transgressing its terms can be imprisoned for up to three years with no proof of criminal intent on his part.

The statute in question would appear to be unconstitutional in view of the principles enunciated by this Court in *Morissette v. United States*, 342 U.S. 246 (1952) and *United States v. United States Gypsum Co.*, ... U.S. ....., 98 S.Ct. 2864 (1978). In *Morissette* this Court held that the crime of conversion required proof of *mens rea* or criminal intent.

> The Government asks us by a feat of construction radically to change the weights and balances in the scales of justice. The purpose and obvious effect of doing away with the requirement of a guilty intent is to ease the prosecution's path to conviction, to strip the defendant of such benefit as he derived at common law from innocence of evil purpose, and to circumscribe the freedom heretofore allowed juries. Such a manifest impairment of the immunities of the individual should not be extended to common-law crimes on judicial initiative. *United States v. Morissette, supra*, p. 263.

In *United States v. United States Gypsum Co.*, 98 S.Ct. 2864, 2873 (1978), the Court spoke of *Morissette* as follows:

> Indeed, the holding in *Morissette* can be fairly read as establishing, at least with regard to crimes having their origin in the common law, an interpretative presumption that *mens rea* is required.

The statute in question is under Chapter 4 of the Illinois Vehicle Code, ch. 95½, 1977, p. 1333, Ill. Rev. Stat. Chapter 4 is entitled " ANTI-THEFT LAWS AND ABANDONED VEHICLES." More specifically it is under Article I of Chapter 4 which is entitled "ANTI-THEFT LAWS". Coming under headings of this nature it must be presumed that said statute contains a larceny-type offense of which the Court in *Morissette* spoke so eloquently:

> Stealing, larceny, and its variants and equivalents, were among the earliest offenses known to the law that existed before legislation; they are invasions of rights of property which stir a sense of insecurity in the whole community and arouse public demand for retribution, the penalty is high and, when a sufficient amount is involved, the infamy is that of a felony, which, said Maitland, is "* * * as bad a word as you can give to man or thing." State courts of last resort, on whom fall the heaviest burden of interpreting criminal law in this country, have consistently retained the requirement of intent in larceny-type offenses. If any state has deviated, the exception has neither been called to our attention nor disclosed by our research. 342 U.S. at 260-261.

While the decision of the Court in *Morissette* was not based on constitutional grounds, it clearly implies that proof of criminal intent is constitutionally required in larceny-type offenses.

> The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in

> freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil. A relation between some mental element and punishment for a harmful act is almost as instinctive as the child's familiar exculpatory 'But I didn't mean to,' and has afforded the rational basis for a tardy and unfinished substitution of deterrence and reformation in place of retaliation and vengeance as the motivation for public prosecution. Unqualified acceptance of this doctrine by English common law in the Eighteenth Century was indicated by Blackstone's sweeping statement that to constitute any crime there must first be a vicious will." *Morissette v. United States*, 342 U.S. 246, 250-251.

A concept so central to our system of law certainly has constitutional protection to some degree. Thus, insofar as the statute in question constitutes a larceny-type offense it violates due process because of its failure to require proof of criminal intent, see *United States v. United States Gypsum Co.*, 98 S.Ct. 2864, 2873-2874.

Insofar as the statute in question could be considered to constitute a public welfare offense as opposed to a larceny-type offense it raises important constitutional questions. As this Court stated in *United States v. United States Gypsum Co.*, 98 S.Ct. 2864, 2873, 2874 (1978).

> While strict liability offenses are not unknown to the criminal law and do not invariably offend constitutional requirements, see *Shevlin-Carpenter Co. v. Minnesota*, 218 U.S. 57, 30 S.Ct. 663, 54 L.Ed. 930 (1910), the limited circumstances in which Congress has created and this Court has recognized such offenses, see e. g., *United States v. Balint*, 258 U.S. 250, 42 S.Ct. 301, 66 L.Ed. 604; *United States v. Behrman*, 258 U.S. 280, 42 S.Ct. 303, 55 L.Ed. 619; *United States v. Dotterweich*, 320 U.S. 277, 64 S.Ct. 134, 88 L.Ed. 48; *United States v. Freed*, 401 U.S. 601, 91 S.Ct. 1112, 28 L.Ed.2d 356, attest to their generally disfavored status. See generally ALI Model Penal Code § 2.05 comments, at 140 (Tent. 4th Draft 1955); LaFave & Scott, Criminal Law 222-223 (1972).

In his concurring opinion in *United States v. Freed*, 401 U.S. 601, 613 (1971) Justice Brennan, noted that ". . .the existence of a *mens rea* is the rule of, rather than the exception to the principles of Anglo-American criminal jurisprudence." He then went on to discuss situations where strict criminal liability might be imposed.

> The situations in which strict liability may be imposed were stated by Judge, now Mr. Justice, Blackmun: "[W]here a federal criminal statute omits mention of intent and where it seems to involve what is basically a matter of policy, where the standard imposed is, under the circumstances, reasonable and adherence thereto properly expected of a person, where the penalty is relatively small, where conviction does not gravely besmirch, where the statutory crime is not one taken over from the common law, and where congressional purpose is supporting, the statute can be construed as one not requiring criminal intent." *Holdridge v. United States*, 282 F.2d 302, 310 (CA 8, 1960). (*United States v. Freed*, supra, p. 613. See also *United States v. Morissette*, 342 U.S. 246, 255, 256).

The issue of the common law origin of the statute involved has already been discussed. But it is now appropriate to consider the statute's relationship to the other standards mentioned by Judge Blackmun in *Holdridge, supra*, and by Justice Jackson in *Morissette, supra*, pp. 255, 256.

The penalty in the instant case is certainly not relatively small. A sentence of two years imprisonment for accidentally signing the wrong name to an auto-

mobile certificate is strong punishment indeed.[2] A person convicted under the statute can be sentenced to up to 3 years imprisonment, see ch. 95½, Sec. 4-108(b) and ch. 38, Sec. 1005-8-1(b)(5) (Ill. Rev. Stat. 1977).

As Justice Frankfurter stated in his dissenting opinion in *Lambert v. California*, 355 U.S. 225, 231 (1957).

> Then, too, a cruelly disproportionate relation between what the law requires and the sanction for its disobedience may constitute a violation of the Eighth Amendment as a cruel and unusual punishment, and, in respect to the States, even offend the Due Process Clause of the Fourteenth Amendment.

Petitioner submits that such is the case herein.

A felony conviction, in and of itself, gravely besmirches a person. A felony is, by definition, a serious crime. And felons are rarely, if ever, looked upon as persons who acted with innocent intent in the commission of the felony. Clearly, an absolute liability felony is an anomaly.

One must also question the reasonableness of the statute in question as an absolute liability statute. It is not an unknown practice in Illinois for one person to authorize another to sign his name to a title application, to a license plate application, or to any of the other applications mentioned in the statute in question.

[2] One of the ironies of the instant case is that the petitioner was charged with two crimes for the single act of signing the name, J. Dags, to the salvage certificate, namely, forgery, and use of a false name. On the former he received a directed verdict in his favor because the court found no evidence that he acted with any intent to defraud (R. 66, 67). On the latter he was found guilty and was sentenced to 2 years in prison, presumably, because he acted without any intent to defraud. Innocent intent should not be so severely punished.

Spouses so authorize each other. Clients authorize attorneys, and so on. Such authorizations are common at the Secretary of State's office and the supervisor of the Title Division assumed that the petitioner was authorized to sign the name "J. Dags" (App. p. 4a).[3] Both the trial court and the appellate court were much concerned with the issue of proper authorization (App. pp. 4a, 5a).

However, the statute in question makes no provision for a person to authorize another to sign his name. Under the terms of the statute all persons signing the names of others, even if authorized to do, are using false names and are therefore committing a felony. Thus, to provide a standard of absolute criminal liability under such circumstances is unreasonable.

Also, insofar as the purpose of the statute is to prevent the concealment of correct information on title applications, the statute is unreasonable as applied to the petitioner's conduct. The information contained on the salvage certificate that the Petitioner signed (R. C55) is exactly the same as the information on the microfilm copy of the prior salvage certificate (R. C54). In fact, Ms. Caldwell who filled out the salvage certificate which the Petitioner signed got all the information off of the microfilm "Duplicate Salvage Certificate" (App. p. 4a). Thus, the material facts are identical and correct on both certificates. There having been no concealment of any material fact, Petitioner submits that it is un-

[3] The supervisor testified that she knew that the petitioner was not J. Dags (App. p. 4a).

reasonable to imprison him for two years simply for accidentally signing the wrong name.[4]

By any of the standards set forth in *Morissette v. United States*, 342 U.S. 246, 255, 256, in *Holdridge v. United States*, 282 F.2d 302, 310 (CA 8, 1960) and mentioned approvingly by Justice Brennan in his concurring opinion in *United States v. Freed*, 401 U.S. 601, 613 (1971), the statute in question fails as an absolute liability statute.

In this Court's opinion in *United States v. Dotterweich*, 320 U.S. 277, 284 (1943) Justice Frankfurter in upholding an absolute liability statute involving a misdemeanor stated "Hardship there doubtless may be under a statute which thus penalizes the transaction though consciousness of wrongdoing be totally wanting."

In juxtaposition to that is Chief Justice Burger's statement in this Court's opinion in *United States v. United States Gypsum Co.*, 98 S.Ct. 2864, 2873 (1978).

> Although Blackstone's requisite "vicious will" has been replaced by more sophisticated and less colorful characterizations of the mental state required to support criminality, see ALI Model Penal Code § 2.02 (Prop Official Draft 1962), intent generally remains an indispensable element of a criminal offense. This is as true in a sophisticated criminal antitrust case as in one involving any other criminal offense.

[4] Another irony of the instant case is that it did not really matter whose name the petitioner signed to the salvage certificate. Since Ms. Caldwell assumed that he was an agent of the title holder insurance company, he could even have signed his own name (App. p. 4a). Had he done so, he could not have been charged with signing a false name, and the result would have been the same.

Besides, the new title to the automobile was issued to the petitioner, not on the basis of the salvage certificate, but rather on the basis of the petitioner's title only application (App. p. 4a, R. C55, and R. 48). There were no charges preferred against the petitioner for signing that application. Whatever name the petitioner signed to the salvage certificate was irrelevant to his obtaining a new title to the car.

To allow the Petitioner to be imprisoned for two years, even though there was no proof that he acted with any criminal intent, undoubtedly creates a severe hardship for him. It does not seem fair or right that such a hardship should be imposed on a man who may well have acted innocently.[5]

Just as a sophisticated criminal anti-trust case requires proof of criminal intent, so too should the felony anti-theft provision involved herein. Petitioner submits that insofar as the statute in question is an absolute liability statute, it deprives him of his liberty without due process of law.

Accordingly, Petitioner respectfully submits that this Court should issue its Writ of Certiorari in order that it may decide this important federal question.

[5] Though the Appellate Court's decision herein was based on holding that a *mens rea* was not necessary (App. p. 6a), the Court implied that, because the petitioner knew that he was signing a name other than his own (and, therefore, a false name) to the salvage certificate, said knowledge constituted *scienter*, or *mens rea* (App. pp. 3a, 6a, 9a.). However, *scienter*, or *mens rea*, is not the knowledge of what one is doing (which all men in the state of consciousness possess), but rather, the knowledge that what one is doing is wrong (i.e., contrary to the law). The Appellate Court herein is under the mistaken notion that the former constitutes *mens rea*. See *Morissette v. United States*, 342 U.S. 246, 270, 271, 274 (1952) for an excellent discussion of this important distinction.

Likewise, though Justice Green of the Court below thought otherwise (App. p. 9a), *Morissette* points out that the question of whether a defendant acted with criminal intent or innocent intent is for the jury, not the Court, to decide. (See *Morissette, supra*, pp. 274, 275).

CONCLUSION

For the reasons severally and collectively assigned here, it is respectfully prayed that this Court issue its Writ of Certiorari to review the judgments of the Illinois Supreme Court and the Illinois Appellate Court.

Respectfully submitted,

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APPENDIX 1

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT SANGAMON COUNTY

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff,

No. 78-CF-25 *v.*

WILLIAM L. DELAY,

Defendant.

JUDGMENT AND SENTENCE

Now come THE PEOPLE OF THE STATE OF ILLINOIS, by RON STONE, State's Attorney of SANGAMON County, and the defendant, in person and by counsel, MICHAEL METNICK AND MARK LIEBERMAN, and now neither the defendant nor defendant's counsel saying anything further why the judgment of the court should not now be pronounced against said defendant on the VERDICT of guilty heretofore entered to the charge in this cause;

Therefore, it is ordered and adjudged by the court that said defendant is guilty of the crime of OFFENSE RELATING TO TITLES AND REGISTRATIONS as THE MANNER CHARGED IN THE INFORMATION.

The court finds the age of said defendant to be 37 years.

The court having heard the evidence on the charge, if any received, and having heard and received evidence, if any, as to the moral character, life, family, occupation,

and criminal record of the defendant, and having considered such evidence in aggravation and mitigation of the offense, and the defendant having nothing further to say, the court hereby sentences said defendant to imprisonment in the ILLINOIS STATE DEPARTMENT OF CORRECTIONS, ADULT DIVISION and fixes the term of imprisonment at 2 (TWO) YEARS.

It is further ordered and adjudged that the defendant be taken from the bar of this court to the common jail of said county, and from there be taken by the sheriff of said county to the ILLINOIS STATE DEPARTMENT OF CORRECTIONS, ADULT DIVISION and be delivered to the Department of Public Safety, and said Department of Public Safety is hereby commanded to confine the defendant in said institution for the term above fixed, or until discharged by due process of law.

It is further ordered that said defendant pay the costs of these proceedings and that a mittimus be issued and executed without delay.

ENTER August 29, 1978 /s/ SIMON L. FRIEDMAN
(Judge of the Circuit Court)

APPENDIX 2

STATE OF ILLINOIS
APPELLATE COURT—FOURTH DISTRICT

General No. 15198 Agenda No. 79-85

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

WILLIAM L. DELAY,

Defendant-Appellant.

Appeal from Circuit Court
Sangamon County, No. 78-CF-25.

Honorable Simon L. Friedman,
Circuit Judge, Presiding.

Mr. JUSTICE MILLS delivered the opinion of the court:

Is one permitted to sign someone else's name to a document and then deny scienter to do the thing done?

Of course not.

The conviction is affirmed.

Delay applied for a certificate of title for a 1977 Pontiac automobile at the Secretary of State's office in Springfield. An employee of the office, Gladys Hoagland, determined that the last title of record for the

automobile was a salvage title issued to Motors Insurance Company. (A salvage certificate is issued only when a car is lost, destroyed, or stolen.) Hoagland then took the defendant to the supervisor of the title division, Shirley Caldwell, and introduced the defendant to Caldwell as "Mr. D."

Hoagland handed Caldwell four documents relating to the automobile: a duplicate application for title; a copy of the salvage certificate; defendant's title only application; and defendant's salvage affidavit. Caldwell discarded the application for duplicate title, because it was inapplicable since the car was in salvage. Caldwell then filled out an application for a certificate of salvage on the automobile and cancelled the microfilm "Duplicate Salvage Certificate." Caldwell then gave the application she had just filled out to the defendant and asked him to sign it. The defendant then signed the application "J. Dags" and returned it to her.

Caldwell assumed that the defendant was an agent of the title holder insurance company, although the defendant never specifically held himself out to be such. During cross-examination, Caldwell stated that she knew defendant was not J. Dags. No power of attorney was presented to Caldwell and Caldwell denied that she told the defendant to sign the name of any other person to the salvage certificate application. After the defendant returned the application to Caldwell, she then issued new title to the automobile in the name of defendant's business "Mr. D's Auto Sales."

(It was stipulated by the parties that Joan Dags was an agent of Motors Insurance Company and had authority to sign title transfers. Dags did not authorize or give permission to the defendant to sign her name.)

Defendant testified that he had purchased the automobile in question from John Bishop, who had allegedly given him a salvage title to the car and the power of attorney. According to the defendant, Bishop showed that he had bought the car from Motors Insurance Company. The defendant stated that he gave this power of attorney to Hoagland at the Secretary of State's office and because of this alleged power of attorney, Delay testified that he believed the car was his. He signed the name "J. Dags" because Caldwell told him to sign the form and he signed it in the manner set out on the microfilm copy of the salvage certificate. (The defendant had three years' experience with title applications involving an average of 18 to 20 transfers per month.)

Delay was charged with using a false name on a salvage certificate application in violation of section 4-105(e) of the Illinois Vehicle Code (Ill. Rev. Stat. 1977, ch. 95½, par. 4-105(e)). (He was also charged with forgery, but the trial court directed a verdict in favor of defendant on that offense.) During the instructions conference, defense counsel requested that the court instruct the jury that the State must prove that the defendant acted with criminal intent. This request was refused, Delay was convicted, he was sentenced to a 2-year term of imprisonment, and this appeal ensued.

The sole issue on appeal is whether criminal intent or some other mental state is a requisite element of the offense of using a false name on a vehicle registration or title application. The defendant relies upon section 4-9 of the Criminal Code (Ill. Rev. Stat. 1977, ch. 38, par. 4-9), which in essence provides that absolute liability may be imposed "if the offense is a misdemeanor which is not punishable by incarceration or by a fine exceeding $500, or the statute defining the offense clearly indicates a

legislative purpose to impose absolute liability * * * ." A violation of section 4-105(e) of the Vehicle Code (using a false name) is a Class 4 felony. Ill. Rev. Stat. 1977, ch. 95½, par 4-108(b).

Initially—and quite aside from the absolute liability aspect of the statute—it seems both rudimentary and patently clear to us that a person simply is not permitted to sign someone else's name to a document and then deny knowledge of the falsity of the act or deny he possessed the intent to do the deed done. Such posture does violence to simple logic.

Now to the issue posited. The Illinois Supreme Court, in *People v. Valley Steel Products Co.* (1978), 71 Ill. 2d 408, 375 N.E.2d 1297, recently held that section 4-9 of the Criminal Code is applicable to the penalty provisions of other statutes which are not a part of the Criminal Code. The court, in that case, held that the provision of the Motor Fuel Tax Law imposing a felony penalty for its violation did not exhibit a clear legislative intent to create absolute liability.

We conclude, however, that section 4-105 of the Vehicle Code does indicate a clear legislative intent to impose absolute liability. We note that, generally, motor vehicle regulations are regarded as absolute liability offenses. (See, *e.g.*, *People v. Strode* (1973), 13 Ill. App. 3d 697, 300 N.E.2d 323; *People v. Van Cura* (1977), 49 Ill. App. 3d 157, 364 N.E.2d 564.) Further, absolute liability has even been imposed for Vehicle Code violations involving felony penalties. See, *e.g.*, *People v. White Brothers Equipment Co.* (1978), 63 Ill. App. 3d 445, 380 N.E.2d 396; *People v. Walker* (1974), 18 Ill. App. 3d 351, 309 N.E.2d 716; *contra*, *People v. Nunn* (1978), 65 Ill. App. 3d 981, 382 N.E.2d 1305.

Beyond this general assumption regarding Vehicle Code offenses, we find the legislative history of section 4-105 to be of even greater importance. Under the 1965 statutes, section 4-103(a)-(d) set forth in substance the offenses listed in subsections (a), (b), (c), and (e) of the present section 4-105. (Ill. Rev. Stat. 1965, ch. 95½, par. 4-103(a)-(d).) Subsection (d) of the 1965 Act, for example, which was the counterpart to section 4-105(e), provided that it was an offense for a person who:

> "(d) *with fraudulent intent* uses a false or fictitious name or address, or makes a material false statement, or fails to disclose a security interest, or conceals any other material fact, in an application * * * ." (Emphasis added.) (Ill. Rev. Stat. 1965, ch. 95½, par. 4-103(d).)

In 1967, this provision was amended and the "fraudulent intent" language was eliminated. (Ill. Rev. Stat. 1967, ch. 95½, par. 4-103.1(e).) That is how section 4-105(e) presently reads.

Where, as a result of an amendment or revision, words are stricken from the statute, it must be concluded that the legislature deliberately intended to change the law (*Town of the City of Champaign v. Overmeyer's, Inc.* (1958), 18 Ill. App. 2d 523, 152 N.E.2d 752.) The inherent implication of the legislature's deletion of the specific mental state requirement is that neither intent nor any other criminal mental state is needed to impose liability under the present section 4-105(e).

Our construction of this statute is further supported by other provisions of section 4-105. For instance, under subsection (c) it is an offense to *possess* a forged title document only if the person *knows* of its forged or altered condition. The retention of "knowledge" as an element of this offense supports the presumption that

the deletion of the fraudulent intent language was not the result of legislative oversight or inadvertence. The absence of similar language concerning a mental state with respect to the present offense implicitly indicates a legislative purpose to impose absolute liability.

Finally, we note that in determining legislative intent, a statute should be construed so as to give effect to every clause. (*Mid-South Chemical Corp. v. Carpentier* (1958), 14 Ill. 2d 514, 153 N.E.2d 72.) To read section 4-105(e) as requiring an element of intent to defraud would render subsection (f) superfluous, for it provides that it is a violation for any person to "[c]*ommit a fraud in connection with any application* under this Act." (Emphasis added.) Ill. Rev. Stat. 1977, ch. 95½, par. 4-105(f).

Defendant has argued that section 4-105(g) indicates a clear legislative intent not to impose absolute liability. We are not persuaded by that argument. Subsection (g) of 4-105 makes it a felony offense for any person to "[w]ilfully violate any provision of Chapter 3 or 4 of this Act [ch. 95½, pars. 3-101 *et seq.*, 4-100 *et seq.*] *unless the violation is otherwise provided for in this Act.*" (Emphasis added.) (Ill. Rev. Stat. 1977, ch. 95½, par. 4-105(g).) The use of a false name, however, is obviously otherwise provided for. Subsection (g) was intended as a catch-all provision and, therefore, cannot be construed as mandating a mental statement requirement of "wilfulness" as to the other offenses specifically provided for in section 4-105.

For these reasons, we conclude that the offense in question is an absolute liability crime and the judgment of the trial court will be affirmed accordingly.

Mr. Justice Green would affirm solely on the basis that defendant's obvious knowledge that he was placing a false name on the certificate application was a sufficient showing of mental state to comply with section 4-3 of the Criminal Code (Ill. Rev. Stat. 1977, ch. 38, par. 4-3). He would therefore hold that the evidence was sufficient to support the conviction and that the trial court properly refused to instruct the jury that criminal intent was a necessary element of the offense.

Judgment affirmed.

GREEN and CRAVEN, JJ, concur.

APPENDIX 3

ILLINOIS SUPREME COURT
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October 1, 1979

Mr. Anthony J. Murray, Jr.
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Chicago, IL 60603

No. 52135—People State of Illinois, respondent, vs. William L. Delay, petitioner. Leave to appeal, Appellate Court, Fourth District.

The Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,

/s/ CLELL L. WOODS
Clerk of the Supreme Court

Supreme Court, U. S.
FILED
APR 1 1980
MICHAEL RODAK, JR., CLERK

No. 79-1018

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

WILLIAM L. DELAY,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition For a Writ of Certiorari to the Appellate Court of Illinois, Fourth Judicial District

BRIEF FOR RESPONDENTS IN OPPOSITION

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No. 79-1018

IN THE

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OCTOBER TERM, 1979

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BRIEF FOR RESPONDENTS IN OPPOSITION

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition. However, as treated more fully in the argument contained herein, respondent does not believe that petitioner has shown any reason for this Court to exercise its sound judicial discretion to grant his Petition for Writ of Certiorari.

QUESTION PRESENTED FOR REVIEW

Whether Due Process requires proof of criminal intent to sustain petitioner's conviction for using a false name on title documents in violation of the Illinois Vehicle Code.

STATEMENT OF THE CASE

Respondent wishes to supplement petitioner's Statement of the Case with the following facts:

A power of attorney is required in order to permit a transfer of title by the transferee without the transferor's signature (R. 15, 16).[1] No power of attorney was ever given or mentioned to Shirley Caldwell during the transaction with petitioner (R. 48-50). The parties stipulated that Joan Dags was an agent of Motors Insurance Company who had authority to sign title transfers. Ms. Dags did not sign any of the exhibits admitted into evidence nor did she give petitioner permission to sign her name (R. 57).

Although petitioner testified that he had obtained a power of attorney from John Bishop, he admitted that Bishop did not hold any certificate showing that title had been transferred to Bishop by the insurance company (R. 84). Petitioner did not call the police nor did he ever talk to anyone at Motors Insurance Company (R. 93).

Shirley Caldwell testified that she never told petitioner to sign the name of any other person on the salvage certificate application (R. 54). Petitioner denied that he had been told to sign any specific name to the application (R. 94, 95).

Petitioner was convicted of theft in 1975 (R. 69, 70).

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[1] All transcript references are to the Report of Proceedings of July 18, 1978.

REASONS FOR DENIAL OF THE WRIT

DUE PROCESS DOES NOT REQUIRE PROOF OF CRIMINAL INTENT TO SUSTAIN PETITIONER'S CONVICTION FOR USING A FALSE NAME ON TITLE DOCUMENTS IN VIOLATION OF THE ILLINOIS VEHICLE CODE.

Petitioner argues that under the principles set forth in *Morissette* v. *United States,* 342 U.S. 246 (1952), a provision of the Illinois Vehicle Code, Ill. Rev. Stat. 1977, ch. 95½, § 4-105(e), is constitutionally infirm because it imposes strict liability on an individual who uses a false name on an application for certificate of salvage. *Morissette,* however, involved construction of a non-regulatory federal statute defining a crime of common law origin and certainly did not purport to present constitutional parameters limiting the State's power to legislate strict liability offenses. In fact, *Morissette* supports respondent's contention that the statute at issue here does not offend Due Process.

In *Morissette,* this Court construed a federal statute to reflect a requirement of scienter. Central to this holding was the determination that the Court should not, in the face of Congressional silence, extend strict liability to a crime derived from common law which had, historically, required proof of a mental element. 342 U.S. at 267. Reaffirming prior decisions rejecting a mens rea requirement with respect to certain types of offenses, this Court expressly distinguished the crime involved therein from those proscribed by regulatory public welfare statutes. 342 U.S. at 252, 253. Violations of these regulations may

> result in no direct or immediate injury to person or property but merely create the danger or probability of it which the law seeks to minimize. . . . The accused, if he does not will the violation, usually is in a position to prevent it with no more care than society might reasonably expect and no more exertion than it might reasonably exact from one who assumed his responsibilities.

342 U.S. at 256. Such is the type of statute presently attacked by petitioner. Further, unlike the crime dealt with in *Morissette,* the offense at issue here cannot fairly be said to have originated in the common law.

Ill. Rev. Stat. 1977, ch. 95½, § 4-105(e) is part of a comprehensive scheme of regulation of motor vehicles designed to ensure the accuracy of documents of title. The scheme, as it relates to petitioner, may be described as follows: When a vehicle has been transferred to an insurance company through payment of damages, the vehicle is deemed to be in salvage. The certificate of title and an application for certificate of salvage must be submitted to the Secretary of State before a certificate of salvage will be issued in the name of the owner. Ill. Rev. Stat. 1977, ch. 95½, § 3-117(b). If the owner wishes to take the vehicle out of salvage, he must surrender his certificate of salvage along with the new application for title. Ill. Rev. Stat. 1977, ch. 95½, § 3-104(e).[2] In this manner, multiple ownership documents are not outstanding.

Clearly, to ensure proper transfer of vehicle ownership and the ability to trace such ownership, the information provided on each and every document must be accurate.[3] Section 4-105(e), prohibiting the use of a false name, is essential to the scheme.

[2] Thus, when petitioner sought to obtain a certificate of title on the insurance company's car, to which he in fact held no salvage certificate, he was first required to apply for a duplicate salvage certificate, surrender it, and then apply for a certificate of title.

[3] Petitioner's contention, that it did not matter what name he signed to the salvage certificate application, is incorrect. First, had he signed his own name rather than "Motor Ins. Co. by J. Dags," Ms. Caldwell's assumption that he was an agent of the insurance company would not have been reasonable and she would have been more cautious to inquire as to the existence of any power of attorney. Second, with respect to tracing the ownership of the vehicle, the records incorrectly reflected that "Motor Ins. Co. by J. Dags" applied for a salvage certificate on November 23, 1977.

Although a reasonable construction of the statute would not, as petitioner suggests, prevent an agent from signing another's name, it does at the very least require that the agent be authorized to do so.

The Illinois Vehicle Code, just as the regulatory statutes referred to in *Morissette,* is designed to minimize the possibilities of improper vehicle transfers and to place a reasonable burden on persons who have assumed certain responsibilities in relation to the public.[4] *Compare United States* v. *Balint,* 258 U.S. 250, 254 (1922); *United States* v. *Dotterweich,* 320 U.S. 277, 280, 281 (1943). Without a reliable system reflecting true vehicle ownership, they could be readily stolen and sold with buyers purchasing at their financial peril. Moreover, unlike the ordinance struck down in *Lambert* v. *California,* 355 U.S. 255 (1957), the statute prohibits an affirmative act under circumstances which should alert the doer to the consequences of his deed. *See United States* v. *Freed,* 401 U.S. 601, 608 (1971).

The nature of Section 4-105(e) further belies any suggestion that it is of common law origin. That the section falls within an article entitled "Anti-Theft Laws" does not make it analogous to the larceny-type offense at issue in *Morissette.* Rather, the classification itself indicates that the statute is preventative and not punitive—a type rarely encountered at common law. *See United States* v. *Balint,* 258 U.S. 250, 251, 252 (1922). In any event, the common law origin of the offense involved in *Morissette* would appear to be significant only as an interpretive device:

[4] It should be noted that petitioner was a dealer able to engage in certain activities only because of his licensed status. *See, e.g.,* Ill. Rev. Stat. 1977, ch. 95½, § 3-118(b). Further, it is reasonable to require that *any* person who signs a name other than his own on documents relating to title take the risk that his signature is not authorized. Petitioner, in fact, clearly had knowledge that he was not authorized to act for the insurance company and, as applied to him, the statute is unquestionably sound.

> The spirit of the doctrine which denies to the federal judiciary power to create crimes forthrightly admonishes that we should not enlarge the reach of enacted crimes by constituting them from anything less than the incriminating components contemplated by the words used in the statute. And where Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed. In such case, absence of contrary direction may be taken as satisfaction with widely accepted definitions, not as a departure from them.

342 U.S. at 263.

One final aspect of the Illinois statute warrants discussion. Its violation resulted in a felony conviction carrying a two year sentence.

In its perusal of strict liability crimes, the Court in *Morissette* observed that typically public welfare offenses result in relatively small penalties and no grave damage to an offender's reputation. 342 U.S. at 246. Although the Court was wholly silent as to any constitutional limitations on the State's power to enact statutes requiring no mens rea, the decision was read to have constitutional overtones in *Holdridge* v. *United States,* 282 F. 2d 302, 310 (8th Cir. 1960). Even *Holdridge,* however, did not present these criteria as touchstones of constitutionality. *United States* v. *Ayo-Gonzales,* 536 F.2d 652, 658 (5th Cir. 1976), *cert den.* 429 U.S. 1072 (1977). Moreover, this Court has construed strict liability statutes resulting in more onerous consequences than those found herein. *E.g., United States* v. *Freed,* 401 U.S. 601 (1971) (ten years); *Williams* v. *North Carolina,* 352 U.S. 226 (1945) (ten years); *United States* v. *Balint,* 258 U.S. 250 (1922) (five years).

Section 4-105(e) is an effective means of maintaining accurate records reflecting the status of motor vehicles within the state and of ensuring their proper sale. The consequences of its violation are not so severe, nor the responsibilities of the offender so unreasonably burdensome, as to bring into question its compliance with Due Process. Petitioner can cite no case supporting a contrary position and neither the Illinois Appellate Court nor the Illinois Supreme Court has addressed the merits of his argument. Certainly no substantial issue has been raised with respect to petitioner's conviction.

CONCLUSION

For the reasons heretofore stated, respondent respectfully requests that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1018

WILLIAM L. DELAY,

Petitioner,

VS.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

Petition For A Writ Of Certiorari To The Appellate Court Of Illinois, Fourth Judicial District

REPLY BRIEF OF THE PETITIONER

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IN THE

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WILLIAM L. DELAY,

Petitioner,

VS.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

Petition For A Writ Of Certiorari To The Appellate Court Of Illinois, Fourth Judicial District

REPLY BRIEF OF THE PETITIONER

QUESTION PRESENTED

Is the constitutional guarantee of due process of law violated by an anti-theft provision of the Illinois Vehicle Code whereby a person transgressing its terms can be imprisoned for up to three years with no proof of criminal intent on his part?

ARGUMENT

(a)

THE STATUTE IN QUESTION CREATES A VARIANT OR EQUIVALENT OF THE LARCENY-TYPE OFFENSES DISCUSSED IN *MORISSETTE* AND, THUS, REQUIRES PROOF OF *MENS REA*.

In its brief the Respondent argues that *Morissette v. United States*, 342 U.S. 246 (1952) ". . . did not purport to present constitutional parameters limiting the State's power to legislate strict liability offenses." (R. Br. p.3) The Respondent may be correct in this view of *Morissette*. However, the central question presented by the instant case is, what are the constitutional parameters limiting a State's power to legislate strict liability offenses? And a very important question it is.

The Respondent's argument is twofold. First, the statute in question is a regulatory public welfare statute and, therefore, strict criminal liability is constitutionally permissible. Second, the statute in question does not create a larceny-type offense analogous to the one at issue in *Morissette*.

As to the latter contention, the Respondent in its brief argues that just because

> ". . . the section falls within an article entitled "Anti-Theft Laws" does not make it analogous to the larceny-type offense at issue in Morissette. Rather, the classification itself indicates that the statute is preventative and not punitive—a type rarely encountered at common law. See *United States v. Balint*, 258 U.S. 250, 251, 252 (1922).

However, a reading of the Article in question makes it clear that it is very much concerned with preventing the

theft of vehicles and their component parts by punishing those who violate its prohibitions. (See Article I, Ch. 95½, Sec. 4-100 et seq. Ill. Rev. Stat. 1977, pp. 1333-1335). By its own terms it is an "ANTI-THEFT LAW." It is thus a variant or equivalent of the larceny-type offenses discussed in *Morissette*, and held therein to require a *mens rea*, 342 U.S. at 260, 261.

Nor can it be held that the statute in question is preventative and not punitive. All criminal statutes are preventative in the sense that they seek to prevent a particular type of conduct. However, they are preventative by being punitive. By their terms they punish those who would engage in the prohibited conduct. Thus, it does not make sense to say that the statute in question (or any criminal statute, for that matter) is preventative, but not punitive. By its very nature, a criminal statute has to be punitive. Nor does the case cited by the Respondent, *United States v. Balint*, 258 U.S. 250, 251, 252, draw any distinction between a preventative criminal statute, as opposed to a punitive criminal statute. Indeed, no such distinction can be logically drawn.

However, the dichotomy that the Respondent has attempted to draw between a preventative criminal statute, as opposed to a punitive criminal statute is indicative of the irreconcilable dichotomy that besets the Respondent's position herein.

For one act, namely, signing "J. Dags" to the certificate, the Petitioner was charged with two separate crimes. On the charge of forgery the Respondent was required to show that the Petitioner acted with *mens rea*. It failed to do so and the judge directed verdict in the Petitioner's favor. For the other crime, the Respondent contends that it is not required to prove *mens rea* because the Petitioner committed a "regulatory" crime.

In the Respondent's view, it is as though there are two distinct types of crimes; First "real" crimes, like forgery, which require proof of *mens rea*; Second, "regulatory" crimes which do not require such proof. And in the Respondent's view, the Petitioner had the great misfortune to commit an act which simultaneously fell into the two different categories of crime.

Thus, for the alleged criminal act of signing "J. Dags" to the salvage certificate, the State of Illinois was, at one and the same time,

(1) required to prove that the Defendant acted with *mens rea*, and

(2) not required to prove that the Defendant acted with *mens rea*.

One would think that under our system of laws, resting as it does on logic and fairness, that the commission of a criminal act by a person would either require (a) that the State prove that the person acted with *mens rea*, or (b) that the State not be burdened with so proving. When, as in the instant case, the State is both required to prove *mens rea*, and yet not required to prove *mens rea*, in order to sustain a conviction for a single alleged criminal act, the bounds of logic have been reached and passed.

The logic of the law requires that there be a unitary standard concerning the requirement of *mens rea* for criminal conduct. The alleged crime of signing "J. Dags" to the salvage certificate either required that the Petitioner acted with *mens rea*, or it did not so require. The State of Illinois can not have it both ways, and simple logic will not have it both ways.

The Petitioner submits that "[t]he existence of a *mens rea* is the rule of, rather than the exception to, the

principles of Anglo-American criminal jurisprudence." *Dennis v. United States*, 341 U.S. 494, 500 (1951). And the State of Illinois should be bound by this rule.

(b)

EVEN IF THE STATUTE IN QUESTION BE CONSIDERED TO BE A REGULATORY PUBLIC WELFARE STATUTE, PROOF OF *MENS REA* IS STILL REQUIRED.

The Respondent argues that the crime involved in *Morissette* was distinguished therein from crimes proscribed by regulatory public welfare statutes (R. Br. p.3). The Respondent then quotes at some length from *Morissette*, 342 U.S. at 256 concerning the characteristics of such regulatory crimes. What the Respondent failed to include, however, was the last few lines of the paragraph from whence the quote came. The Court in *Morissette* concluded that paragraph on strict liability regulations as follows:

> "Also, penalties commonly are relatively small, and conviction does no grave damage to an offender's reputation. Under such considerations, courts have turned to construing statutes and regulations which make no mention of intent as dispensing with it and holding that the guilty act alone makes out the crime. This has not, however, been without expressions of misgiving." (*Morissette, supra* p. 256)

This, of course, highlights one of the central constitutional problems in the instant case. For, the Petitioner's penalty was not small and a felony conviction does grave damage to a person's reputation. Because of the severe penalty involved herein, the Petitioner reasserts that the Illinois statute does not fit the definition of a strict liability statute as set forth in *Morissette*, supra, 342 U.S. at 256, and in Justice Brennan's concurring opinion in *United States v. Freed*, 401 U.S. 601, 613 (1971),

which adopted approvingly the standards set forth by Judge, now Justice, Blackmun in *Holdridge v. United States*, 282 F.2d 302, 310 (CA 8, 1960).

The Respondent further argues that

> ". . . this Court has construed strict liability statutes resulting in more onerous consequences than those found herein. E.g. *United States v. Freed*, 401 U.S. 601 (1971) (ten years); *Williams v. North Carolina*, 325 U.S. 226 (1945) (ten years); *United States v. Balint*, 258 U.S. 250 (1922) (five years). (R. Br. p.6).

However, these cases are distinguishable from the instant case.

In *United States v. International Minerals*, 402 U.S. 558, 564, 565 (1971) Justice Douglas, in delivering the Court's opinion, said:

> "In *Balint* the Court was dealing with drugs, in *Freed* with hand grenades, in this case with sulfuric and other dangerous acids. Pencils, dental floss, paper clips may also be regulated. But they may be the type of products which might raise substantial due process questions if Congress did not require, as in *Murdock*, "*mens rea*" as to each ingredient of the offense. But where, as here and as in *Balint* and *Freed*, dangerous or deleterious devices or products or obnoxious waste materials are involved, the probability of regulation is so great that anyone who is aware that he is in possession of them or dealing with them must be presumed to be aware of the regulation."

The Petitioner is also uncertain as to whether or not the crime involved in *Freed* (possession of unregistered hand grenades) was a strict liability crime. For, it is difficult to see how a person could innocently possess unregistered hand grenades, particularly in a State, California, where the possession of grenades is illegal (*Freed*, supra, 401 U.S. at 604). As Justice Douglas noted in the Court's opinion ". . . one would hardly be surprised to learn that possession of hand grenades is not an innocent act." (*Freed*, supra, p. 609).

The case of *Williams v. North Carolina*, 325 U.S. 226 (1945) involved charges of bigamous cohabitation and, for the most part, concerned the full faith and credit clause of the Constitution. However, the issue of whether or not the Defendants acted fraudulently in obtaining Nevada divorces was presented to the jury, see *Williams*, pp. 235, 236.[1] In the instant case the issue of whether the Petitioner acted fraudulently, or with any culpability whatsoever, was not presented to the jury.

The Petitioner's case does not involve dangerous drugs or hand grenades, but simply a vehicle title. And one must ask, what substantial State interest can there possibly be that justifies denying to the Petitioner his right to litigate his culpability before the jury?[2] None, it would appear. This is particularly so, as this is a case of first impression in Illinois, even though the statute in question has been in effect since 1967. Thus, enforce-

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[1] Justice Murphy, in his concurring opinion, which was joined by Chief Justice Stone and Justice Jackson, relies, in large part, on the fact that the jury found the defendants to have acted fraudulently, *Williams*, supra, pp. 240, 241. Justices Rutledge, Black and Douglas dissented.

Williams was the only one of the three cases cited by the Respondent that involved actual prison sentences. Mr. Williams was sentenced to three to ten years imprisonment and the second Mrs. Williams to three to five years imprisonment, *State v. Williams*, 220 N.C. 445, 17 SE2d 769 (1940). Both *Balint* and *Freed* involved appeals of dismissed indictments.

[2] For a lengthy and compelling article arguing that strict criminal liability ought to be recognized as fundamentally wrong as a matter of constitutional law, see Alan Saltzman, *Strict Criminal Liability and the United States Constitution: Substantive Law Due Process*, 24 Wayne Law Review 1572 (Sept. 1978). See also, Herbert L. Packer, *Mens Rea and the Supreme Court*, 1962 Sup. Ct. Rev. 107 (1962).

ment of the statute would hardly be hampered by requiring the Respondent to prove that the Petitioner acted with criminal intent.

It is interesting to note that in the Respondent's view the Petitioner would not have been convicted had he been authorized to sign the name, "J. Dags," R. Br. p. 5. The Respondent concedes that one can sign a false name (*i.e.*, a name other than one's own) under certain circumstances, namely, when one is authorized to do so. This is so, even though the statute in question sets forth no provisions allowing the signing of others' names by those so authorized. However, the jury was never instructed that it could acquit the Petitioner if it found that (a) he was authorized to sign the name "J. Dags" to the salvage certificate, or (b) that he acted with the belief that he was authorized to sign the name "J. Dags."

The jury was simply instructed as follows:

> To sustain the charge of an Offense Relating to Titles and Registrations, the State must prove the following propositions:
>
> That the defendant did use a false or fictitious name on an application for a salvage certificate. (R. C122).

That was the sole proposition that the State had to prove. Under the instructions given, even if the jury believed that Petitioner was authorized to sign "J. Dags", it would have been required to find the Petitioner guilty. For, it was clear from the evidence that the Petitioner signed a false name, a name other than his own.

If, in fact, a scheme of authorization was implicit in the actual operation and interpretation of the statute (particularly in determining what constituted a "false name"), judicial instructions relating to that scheme of

authorization should have been given to the jury. The failure to give such instructions constitutes a violation of the Petitioner's right to due process of law.

(c)

THERE HAVING BEEN NO PROOF OF *MENS REA*, THE PETITIONER'S SENTENCE WAS SO DISPROPORTIONATE AS TO CONSTITUTE CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF HIS RIGHTS UNDER THE EIGHTH AND FOURTEENTH AMENDMENTS.

In its brief the Respondent argues that "the consequences of [the statute's] violation are not so severe, . . . as to bring into question its compliance with Due Process" (R. Br. p. 7). The Petitioner believes that the contrary is the case.

As Justice Frankfurter stated in his dissenting opinion in *Lambert v. California*, 355 U.S. 225, 231 (1957).

> Then, too, a cruelly disproportionate relation between what the law requires and the sanction for its disobedience may constitute a violation of the Eighth Amendment as a cruel and unusual punishment, and, in respect to the States, even offend the Due Process Clause of the Fourteenth Amendment.

In the recent case of *Rummel v. Estelle*, 48 LW 4261, 4262, 4263 (dec. March 18, 1980) it was noted that "[T]his Court has on occasion stated that the Eighth Amendment prohibits imposition of a sentence that is grossly disproportionate to the severity of the crime. See, e.g., *Weems v. United States*, 217 U.S. 349, 367 (1910)."[3] *Weems* involved the intentional falsification of

[3] As to the States, cruel and unusual punishment is prohibited by the 14th Amendment, *Robinson v. California*, 370 U.S. 660, 667 (1962).

information in a public record, "though there be no one injured, though there be no fraud or purpose of it, no gain or desire for it." See *Weems*, pp. 363 and 365. In *Rummel*, 42 LW at 4263, this Court was struck by "the triviality of the charged offense" in *Weems*.

The instant case, like *Weems*, involves the alleged falsification of a public record. As in *Weems* there was no injury to person or property.[4] And, also, like *Weems*, the charged offense is trivial.[5] However, unlike *Weems*, there is no allegation or proof of criminal intent in the instant case.[6] Therefore, is it not a violation of due process to imprison a man for two years for a trivial offense which he may have accidentally committed?

In *Robinson v. California*, 370 U.S. 660, 667 (1962) this Court held unconstitutional a statute making it a crime to be addicted to narcotics. Justice Stewart stated therein

> "To be sure, imprisonment for ninety days is not, in the abstract a punishment which is either cruel or unusual. But the question cannot be considered in the abstract. Even one day in prison would be a cruel and unusual punishment for the "crime" of having a common cold." (*Robinson v. California*, supra, p. 667.

[4] The Respondent characterizes the statute involved as one whose violation "may result in no direct or immediate injury to person or property but merely create(s) the danger or probability of it which the law seeks to minimize . . ." (R. Br. pp. 3, 4).

[5] Admittedly, the punishment in *Weems* was much more severe. Nonetheless, the punishment visited upon the Petitioner is very severe.

[6] The lack of a *mens rea* in the instant case should provide the "objective factor" desired by the Court in *Rummel* in order to determine if punishment is cruel and unusual. See *Rummel v. Estelle*, 48 LW 4261, 4264.

If it is a violation of due process to imprison a man for being a narcotics addict, why is it not a violation of due process to imprison a man for two years for accidentally signing a false name to a vehicle title? There may well be a higher degree of moral fault in one's becoming the former than in one's doing the latter.[7]

In *Rummel v. Estelle*, 48 LW at 4263, this Court quoted approvingly from the opinion of Justice Stewart in *Furman v. Georgia*, 408 U.S. 238, 306 (1972) wherein he stated:

> "The penalty of death differs from all other forms of criminal punishment, not in degree but in kind. It is unique in its total irrevocability. It is unique in its rejection of rehabilitation of the convict as a basic purpose of criminal justice. And it is unique, finally, in its absolute renunciation of all that is embodied in our concept of humanity."

It is obvious that a person who has been convicted of an absolute liability crime cannot be rehabilitated. For, a State can only rehabilitate a person who is morally responsible for his crime. And an absolute liability "criminal" is, by definition, not morally responsible, as he acted without *mens rea*. He, as humans are sometimes wont to do, simply made an innocent mistake.

As Justice Powell stated in his dissent in *Rummel v. Estelle*, 48 LW at 4267:

> "The scope of the Cruel and Unusual Punishment Clause extends not only to barbarous methods of punishment, but also to punishments that are grossly disproportionate. Disproportionality analysis

[7] Saltzman in his article on *mens rea* speaks of the decision in *Robinson v. Calif.*, supra, as follows: "This holding might well rest on the assumption that constitutional weight is to be given to avoiding morally undeserved punishment." Op. Cit. 24 Wayne Law Review 1572, 1616 (1978).

> measures the relationship between the nature and number of offenses committed and the severity of the punishment inflicted upon the offender. The inquiry focuses on whether a person deserves such punishment, not simply on whether punishment would serve a utilitarian goal. A statute that levied a mandatory life sentence for overtime parking might well deter vehicular lawlessness, but it would offend our felt sense of justice."

Likewise, the Petitioner's sentence herein offends our sense of justice. What the Petitioner did is, in no way, deserving of the severe sentence of two years imprisonment. Like the Court in *Weems*, supra, we ". . . believe that it is a precept of justice that punishment for crime should be graduated and proportioned to offense." 217 U.S. at 367. That proportion is totally lacking here.

It is written in the heart of man that he should not be imprisoned for two years for an act innocently done. Let it now be written in the law of our constitution.

CONCLUSION

For the reasons severally and collectively assigned here, it is respectfully prayed that this Court issue its Writ of Certiorari to review the judgment of the Illinois Appellate Court.

Respectfully submitted,

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APPENDIX A

COMMENTARY ON CERTAIN FACTS

Following is a short commentary on certain facts in this case which, while not essential to the constitutional issue herein, are of some interest nonetheless.

In its brief, the Respondent argues as follows:

> Petitioner's contention, that it did not matter what name he signed to the salvage certificate application, is incorrect. First, had he signed his own name rather than "Motor Ins. Co. by J. Dags," Ms. Caldwell's assumption that he was an agent of the insurance company would not have been reasonable and she would have been more cautious to inquire as to the existence of any power of attorney. Second, with respect to tracing the ownership of the vehicle, the records incorrectly reflected that "Motor Ins. Co. by J. Dags" applied for a salvage certificate on November 23, 1977. (R. Br. p. 4, n.3)

First, Ms. Caldwell knew that the Petitioner was not J. Dags (4a).[1] Since she assumed that the Petitioner was an agent of the insurance company (and thus empowered to sign for it), it obviously did not concern her as to what name the Petitioner signed. Since she assumed the Petitioner's agency, why would she have been bothered if the Petitioner signed his own name? It is not logical to argue that "she would have been more cautious" had the Petitioner done so. Most people become cautious when you sign someone else's name, not when you sign your own.

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[1] Refers to the opinion of the Court below printed in Appendix 2 of the Petition for Certiorari.

Second, with respect to tracing the ownership of the vehicle, if we assume that the Petitioner (or anyone else, for that matter) had been directly authorized by J. Dags to sign her name and then did so, the title records would be similarly "incorrect". Trial testimony revealed that it is a common practice in the Illinois Secretary of State's Office for persons to sign the names of others to vehicle titles. As is shown in the instant case, the authorities in charge of the Title Division operate on the assumption that said persons are properly authorized. So there must be thousands upon thousands of Illinois vehicle titles signed by agents using the names of others. Would the Respondent view all these as likewise "incorrect"?

In its Brief, p. 2, the Respondent states as follows: "Although petitioner testified that he had obtained a power of attorney from John Bishop, he admitted that Bishop did not hold any certificate showing that title had been transferred to Bishop by the insurance company (R. 84)."

While this is true, the Petitioner testified that John Bishop did show him a salvage title in the name of Motors Insurance Company, and that Bishop told him that he had bought the car from that Company (R. 83, 84).[2] The Petitioner also testified that Bishop showed him a piece of paper stating that Bishop had bought the car from Motors Insurance (R. 84, 85).

The Respondent also asserts that "Petitioner denied that he had been told to sign any specific name to the application (R. 94, 95)". (R. Br. p. 2). The record in relevant part is as follows:

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[2] All transcript references are to the Report of Proceedings of July 18, 1978.

Cross Examination by Ronald J. Stone, Assistant State's Attorney.

Q. Neither Miss Caldwell nor Miss Hoagland ever told you to sign J. Dags, did they?
A. She told me to sign this name that was in question.
Q. Could you repeat that answer?
A. She had the microfilm copy and she said sign it like this.
Q. She said sign it like this?
A. Right.
Q. Didn't you say on direct examination she just said sign this?
A. Yeah, she said sign it, but the microfilm copy was there, sir, otherwise I wouldn't have known what to sign. (R. 94).